

## REMARKS

Claims 1, 2, 8, 14, 20 and 21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Mischke. Claims 5-7, 11-13 and 17-19 were rejected under 35 U.S.C. § 103 as being obvious over Mischke. These rejections are traversed for the following reasons.

Claim 1 recites "maintaining retarding the timing when the diesel engine is in the transient mode; determining, after the diesel engine has been operating in a transient mode, whether the diesel engine is then operating out of the transient mode; and advancing the fuel injection timing for the diesel engine, if the diesel engine is no longer in the transient mode." As shown in Applicants' Figure 6, steps 48 and 52 maintain retarding the timing until the diesel engine is out of the transient mode. Mischke fails to teach or suggest this feature.

In Mischke, the timing is retarded for a predetermined period of time (e.g., 3 seconds) and then advanced slowly until the steady state operational mode is reached. This feature is shown in Figure 3 of Mischke with the transient beginning at time t1 and the retarding of the timing lasting until time t2. The retarding angle is then increased from time t2-t3. This is contrary to claim 1 which maintains the retarding of the timing until the transient mode is exited and advances the timing only after the engine is out of the transient mode of operation. Thus, Mischke fails to teach or suggest the elements of claim 1.

For the above reasons claim 1 is patentable over Mischke. Claims 5-7 variously depend from claim 1 and are patentable over Mischke for at least the reasons advanced with respect to claim 1.

Claims 8, 11-14 and 17-20 recite features similar to those discussed above with reference to claim 1 and are also submitted to be patentable over Mischke.

It is believed that the foregoing amendments and remarks are fully responsive to the Office Action and that all the claims herein are now allowable.

In the event the Examiner has any queries regarding the instantly submitted Amendment, Applicant's attorney respectfully requests the courtesy of a telephone conference to discuss any matters in need of attention.

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If there are any additional charges with respect to this response or otherwise,  
please charge them to Deposit Account No. 07-0846.

Respectfully submitted,

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